(3)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

Writ Petition No. ..... 786 /..2003

PETITIONER : Ram Karan Chouhan
Aged about 56 years
S/o Late Shri Raghunath Chouhan,
R/o Village Gothanpur, Fundudihari,
Ambikapur, Distt. Surguja.

VERSUS

RESPONDENTS :

1. State of Chhattisgarh
Through Secretary
Environment and Nagriya Vikas
Vibhag, Mantralaya,
D.K.S. Bhawan, Raipur.

2. Director,
Nagriya Prashasan and Vikas
Directorate, Raipur.

3. Chief Municipal Officer
Ambikapur, Distt. Surguja

4. Chief Municipal Officer
Nagar Panchayat, Bagbahra
Distt. Mahasamund.

5. President Nagar Palika
Ambikapur Distt. Surguja.

P. R. No. 6302/03
Presented by Shri D.N. Pandey
dated 25/8/03

25/8/03

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(51)

A.F.R

आदेश पत्रक

मामला क्रमांक W.P.786 सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रा के अन्तिम आदेश

20.9.2006

Shri Manoj Paranjape, counsel for the petitioner.

Shri Sushil Dubey, Government Advocate for the State/ respondents No. 1 and 2.

Shri Sanjay K. Agrawal, and Shri Saurabh Sharma, Advocates for respondents No. 3 and 5.

None for respondent No.4.

Heard finally with the consent of the parties.

Order dictated as follows:

ORAL ORDER
(20.9.2006)

The petitioner, who was working as an Assistant Revenue Inspector in the establishment of Municipal Council, Ambikapur, District-Sarguja, has challenged the validity of order dated 6.2.2003 (Annexure P-8), issued by the Government regarding his deputation. By the aforesaid order, Annexure P-8, the services of the petitioner has been directed to be temporarily transferred from Municipal Council Ambikapur to Nagar Panchayat, Bagbahra on deputation.

The petitioner has taken this ground that before passing such an order of deputation by the State Government, neither the consent of the petitioner was obtained nor any consent was taken either from the Municipal Council Ambikapur (parent department or lending authority) or from the Nagar Panchayat, Bagbahra (borrowing authority).

The reply of Nagar Panchayat, Bagbahra (respondent No.4) has been filed in this case. Vide para 4 of the reply, it has been very specifically mentioned that no prior consent was obtained by the State

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मामला क्रमांक W.P.786 **सन्** 2003

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Government from the said Nagar Panchayat. So far as the other respondents are concerned, no reply has been filed on their behalf.

It is submitted by learned counsel for the petitioner that the services of the petitioner are governed by the provisions of C.G. Municipal Employees (Recruitment and Conditions of Service Rules) 1968 and in the said Rules, there is no provision of deputation etc., therefore, the case of the petitioner, as well as the casesof other employees would be governed by the general principles in this regard as the deputation is also an incidence of service. He refers to the two decisions rendered by the Apex Court in connection with deputation.

In the matter of **State of Punjab and others Vs. Inder Singh and others, 1997 AIR SCW 3949**, it has been held by the Apex Court that the concept of "deputation" is well understood in service law and has a recognized meaning. 'Deputation' has a different connotation in-service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitments Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post.

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In AIR 1999 SC 1948 in the matter of Umapati Choudhary Vs. State of Bihar and another, it has been again held by the Apex Court that the deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not.

After going through the above said decisions, it is apparent that 3 conditions must be fulfilled before passing an order on deputation i.e.

i. there must be voluntary decision of the parent department to lend the service of his employee;

ii. that there must be corresponding acceptance of such services by the borrowing employer; and

iii. there can be no deputation of an employee without consent of the said employee so deputed.

Apart from the above, the other circumstances are also there as the necessity for sending the employee on deputation i.e. to meet the exigencies to public services and the time period, for which, an employee is being sent on deputation.

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित –4–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the present case, none of the above conditions have been fulfilled by the State Government and the impugned order has been passed. A perusal of the impugned order as well as the pleadings in the petition would show that no consent was obtained from the petitioner before passing the order of his deputation as contained in Annexure P-8. It also appears that the consent of the Nagar Panchayat, Bagbahra has not been obtained in this case and no time etc. has been fixed by the Government regarding the period of deputation of the petitioner. In the opinion of this Court, the impugned order does not fulfill the requirement regarding sending of a person on deputation and the same cannot be sustained in the eyes of law.

For the reasons stated above, the writ petition is allowed. The impugned order dated 6.2.2003 (Annexure P-8) regarding deputation of the petitioner from Municipal Council, Ambikapur to Nagar Panchayat, Bagbahra, is hereby quashed.

In the facts and circumstances of the case, there shall be no order as to cost.

Sd/-
Sunil Kumar Sinha
Judge

sunita

(पीछे देखिये)

20.9.06